

**STATEMENT OF REASONS FOR APPEAL**  
**PROJECT: KARMEL PLAZA AND SQUARE**  
**DATE OF ACTION: OCTOBER 19, 2015**  
**BZZ-7324**

The Applicant hereby appeals from the action of the Minneapolis Planning Commission relating to Item A—Expansion of a Non-Conforming Use. Specifically, Applicant objects to the inclusion of a sixth condition, namely:

6. The expansion of nonconforming use shall be limited to the square footage on the south side of the building, internal to the site, which is referenced on page two of the staff report.

The Applicant does not appeal from the action of the Minneapolis Planning Commission relating to Item B—Site Plan Review.

**BASIS FOR APPEAL**

- 1. There was no testimony or evidence in opposition to the request for expansion of a non-conforming use.**

Significant testimony in favor of the project occurred at the open public hearing portion of the meeting on September 21, 2015. Numerous residents of the area and business owners at the project testified as to the benefit of the project and the need for expansion. No one spoke against the project. The only cautionary information was parking ticket data from January 1, 2015 to September 13, 2015. That data was shown to not be useful as it involved the period of significant parking disruption while a 170 vehicle parking ramp was being constructed at the project. The parking ramp did not open until around September 1, 2015. The September 21, 2015 meeting was continued to determine if more current parking ticket data could be obtained and for advice as to whether the Planning Commission could limit uses if the expansion was approved.

- 2. The Planning Commission made no findings to justify limiting the expansion of non-conforming use to only a portion of the concurrently approved addition to the building.**

The actions taken by the Planning Commission on October 19, 2015 contained no discussion or findings. The actions were short and clear: (YouTube of the Hearing at 2:15:18 to 2:17:55).

Ok are there any questions of staff.? Commissioner Kronzer—

Comm. Kronzer: I'd like to make a motion. I'd like to make a motion that we approve staff recommendation A—expansion of a nonconforming use with the addition of a sixth condition. That being the expansion of nonconforming use, be limited to the square footage on the south side of the building only as noted on page 2 of the staff report.

Unknown Comm. Second

Chair: Alright we have a motion and a second to approve staff recommendation and Commissioner Kronzer, just to clarify this is only on item A—the expansion of a non-conforming use?

Comm. Kronzer: Correct.

Chair: With a sixth condition related to the limiting the expansion to the square footage on the south side of the building. Is there any further discussion? Mr. Wittenberg—

Mr. Wittenburg: Could I just clarify is that the internal to the site floor area?

Comm. Kronzer: Ya.

Mr. Wittenburg: Ok.

Chair: Alright. Is there any further discussion? I see none, clerk please call the role.

**VOTE Taken—Motion carries 8-0**

Chair: OK and Item B is the site plan? Yes

Comm. Motion to approve site plan approval as recommended by staff with the six stated conditions.

Unknown Comm. Second.

Chair: Alright we have a motion and a second. Is there further discussion? Seeing none, clerk please call the role.

**VOTE Taken—Motion carries 8-0**

Chair: And that motion carries. That concludes our discussion on that item and also concludes our business for this evening.

Applicant only appeals the sole limitation placed on either of the staff recommendations. Commissioner Kronzer limited non-conforming use (i.e. shopping mall usage) granted in passing Item A to the expansions on the south side of the building. By clarification from the chair, the limitation applied only to item A and therefore did not limit the approval of the site plan itself. The simple question for appeal is therefore: Did the planning commission have a legal basis to limit nonconforming use rights to only a portion of the project it otherwise approved?

There was overwhelming testimony on the open phase of the hearing on September 21, 2015, confirming the appropriateness of the project, as reflected by the staff recommendations to approve both item A and item B. As is apparent from the video of the action, there were no findings to support the limitations that were imposed by the added sixth condition upon item A. The only topic was raised by the Commissioners that could be possibly construed as a possible basis for limitation was parking and traffic. However, the evidence and testimony did not in fact support a limitation as on this or any other issue as: 1) Staff did not identify it as a concern; 2) The traffic ticket data provided at the September 21, 2015 meeting was not relevant as it was before or during parking ramp construction; 3) partial traffic ticket data provided at the October 19, 2015 hearing showed traffic tickets were actually down since ramp construction; and 4) in fact, the planner indicated at the October 19, 2015 meeting that "I did bring it up to public works and they are satisfied that with the TDMP on file. They said this proposal does not exceed the 10,000 square feet that a normal TDMP would be subject to." Again, there were no findings that any parking, traffic or traffic ticket concerns were the basis of limitations of the non-conforming use.

- 3. The action by the Planning Commission in item A to grant non-nonconforming use rights cannot be limited to only a portion of the building, especially without stating a basis for the limitation.**

Staff found that the project met all of the applicable 6 criteria under Minneapolis Ordinance § 531.50 for granting an expansion of non-conforming use for the entire extent of the project addition. The planning commission necessarily agreed those criteria were met by granting an extension of non-conforming use. It is also implicit in its approval of the entire site plan.

It is worth noting that the September meeting was continued in part as stated by the Planning Commission Chairman on October 19, 2015: "We had asked for some additional clarification from staff specifically related to our ability to limit the specific uses within the addition that is proposed on this property." (YouTube at 2:00:50). In this regard, the planner indicated: "The city attorney concluded that even if the commission approved the physical expansion of the structure, the commission is still able to limit the use in the areas being expanded." (YouTube at 2:02:15). While it may be true that the commission has the ability to limit use in the areas being expanded, there certainly must be a basis for the limitation. Additionally, limitation in use is very different from limiting non-conforming use expansion in certain parts of the addition. Those are completely different actions that the Planning Commission apparently misunderstood.

The project is a legal non-conforming use because it was originally classified as a farmer's market. When the ordinance defining a farmer's market changed, all agreed it became a non-conforming shopping mall. In fact, expansions of that legal non-conforming use were approved by the Planning Commission in 2010 (BZZ-4801) and again in 2012 (BZZ-5482). Steve Poor even told the commissioners that: "This is a shopping center, we typically do not go into shopping centers and check all the tenants all the time. We don't require them to amend CUP's, when they get CUP's. Think of how that would stifle the marketplace." (YouTube at 2:04:20).

The action of limiting some of the addition to I-1 usage and the balance to shopping center (commercial) usage would essentially amount to a bizarre version of spot zoning on both vertical

and horizontal plans. Such action would be completely unprecedented in this state. Unequivocally, without any findings to support such an unprecedented action of spot limiting non-conforming use expansion for only this ethnic shopping mall in the City of Minneapolis, the limitation is on its face arbitrary, capricious and a violation of equal protection. *See e.g. Hay v. Grow Tp., Anoka County*, 206 N.W.2d (1973)

**4. There were no findings that could have been made on the record established to support limiting some of the project to I-1 use.**

The significant parking structure completed by the Applicant at the project pursuant to a previous application has solved the parking and related traffic issues at this project. The 311 parking spaces exceed the required parking after completion of the project at issue by 21 spaces. The parking requirement for the site plan will be identical whether or not the non-conforming uses are limited or not. In other words, the parking requirements for the I-1 usages and the shopping center are both incrementally 1 space per 500 feet. There was no testimony or evidence that certain shopping center uses may cause any concerns that I-1 usage would not.

**CONCLUSION**

For the foregoing reasons, the Applicant/Appellant respectfully requests that the appeal of condition 6 to item A be vacated.

SPEETER & JOHNSON

Dated: October 28, 2015

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